Office - Supreme Court, U. S.
FILED
OCT 17 1940
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1940

No. 478

METROPOLITAN BUILDING & LOAN ASSOCIATION, ET AL,
Petitioners

v.

TEXAS UNEMPLOYMENT COMPENSATION COMMISSION, ET AL,
Respondents

RESPONDENTS' MOTION TO REFUSE THE PETITION FOR WRIT OF ERROR

GERALD C. MANN
Attorney General of Texas
GEORGE W. BARCUS
R. W. FAIRCHILD
Assistant Attorneys General
Attorneys for Respondents

FIRM FOUNDATION - AUSTIN

SUBJECT INDEX

	Page
Caption	1
Question Presented	1
Statement, Argument and Authorities	2

AUTHORITIES

Buckstaff Bathhouse Co. v. McKinley, Cmm'r., 60 U. S. Sup. Ct. 279, 127 S. W. (2d) 802	4
Capital Building & Loan Association v. Kansas, 83 Pac. (2d) 106	4
C. O. G. Railroad Co. v. Mackey, 256 U. S. 531	6
Fidelity-Philadelphia Trust Co. v. Hines, 10 Atl. (2d) 553	4
Metropolitan Building & Loan Association v. Texas Unemployment Compensation Commission, 139 S. W. (2d) 309	4
North Carolina Unemployment Compensation Commission v. Wachovia Bank & Trust Co., 2 S. E. (2d) 592	4
South Carolina v. United States, 199 U. S. 437	7
Thomson v. Union Pacific Ry., 9 Wall 579	7
Western Bank & Trust Co. v. Unemployment Compensation Commission of Ohio, (not yet published)	5

AUTHORITIES—Continued

Page

10 Western Union Telegraph Co. v. Texas, 105 U. S. 460 6

Title 11, Chapter 11, U.S.C.A. 5

Title 11, Chapter 12, U.S.C.A. 2

Federal Social Security Act, 42 U.S.C.A., par. 1107 3

Section 1464, Subsection (k), Federal Home Loan Bank Act 6

Section 1464, Subsection (h), Home Loan Act of 1933 7

Texas Unemployment Compensation Act passed in 1937 2

Section 19 of Unemployment Compensation Act of Texas 3

IN THE

Supreme Court of the United States

OCTOBER TERM, 1940

No.----------

METROPOLITAN BUILDING & LOAN ASSOCIATION, ET AL,
Petitioners

v.

TEXAS UNEMPLOYMENT COMPENSATION COMMISSION, ET AL,
Respondents

RESPONDENTS' MOTION TO REFUSE THE PETITION FOR WRIT OF ERROR

To the Honorable The Supreme Court of the United States

Respondents object to the court granting the writ of certiorari in this cause and pray that said petition be denied for the following reasons:

I.

The question determined by the Court of Civil Appeals in Texas adverse to the contention of the petitioners is not in conflict with any of the decisions

of this court and does not involve a Federal question.

II.

The holding of the Court of Civil Appeals in Texas in the case at bar is in line with the holdings of the courts of the various states in the Union as well as in harmony with the holdings of this court on the question involved, namely, that petitioners are not such instrumentalities of the Federal Government as exempt them from the provisions of the Unemployment Compensation Law of Texas.

STATEMENT, AUTHORITIES AND ARGUMENT

The Legislature of Texas in 1937 amended what is known as the Unemployment Compensation Act, being House Bill No. 586, chapter 67, page 121, Regular Session.

Petitioners' sole contention is that they are exempt from the provisions of said statute because they, and each of them, are instrumentalities of the Federal Government.

The only reason they claim to be instrumentalities of the Federal Government is that they, and each of them, own stock in the Federal Home Loan Bank created under the provisions of 12 U. S. C. A. page 962. Their contention is that by subscribing to the stock they became a member of the Federal

Home Loan Bank, and that since the Secretary of the United States Treasury may require them, and each of them, to perform some duties for the Federal Government, it makes them instrumentalities of the Government, although they have never rendered any such service.

In other words, petitioners rely entirely upon their right to be relieved from the Unemployment Compensation Law by virtue of the fact that they have become members of the Federal Home Loan Bank and therefore may in the future be required to perform some service for the United States Government. They do not claim that they have ever performed or rendered any service for the United States Government.

Section 19(g) (6) of the Unemployment Compensation Act of Texas (being the statute in controversy) reads:

> "The term 'employment' shall not include; * * *.
>
> "(B) Service performed in the employ of any other state, or its political subdivision, or of the United States Government, or of an instrumentality of any other state or states or their political subdivisions or of the United States."

The above quoted provision of the Texas statute is almost an exact copy of the Federal Social Security Act, 42 U. S. C. A., par. 1107 (c) (5) which

provides that the term "employment" means any service, "except * * * service performed in the employ of the United States Government or of an instrumntality of the United States."

The Court of Civil Appeals in the case at bar, 139 S. W. (2d) 309, held that petitioners were not such instrumentalities of the Federal Government as exempted them from the provisions of the Texas statute. This we submit is in conformity with the decision of all the courts which have passed on the unemployment compensation statutes.

In *Capital Building and Loan Association v. Kansas, Commission of Labor*, 83 Pac. (2d) 106, the Supreme Court of Kansas upheld a law almost identical with the statute of Texas and held that the building and loan associations were not exempt from payment of unemployment compensation.

In *Buckstaff Bathhouse Co.* v. *McKinley, Commissioner*, 60 U. S. Sup. Ct. 279, this court affirmed a judgment of the Supreme Court of Arkansas, 127 S. W. (2d) 802, which upheld in all respects a statute very similar to the Texas statute here involved.

In *Fidelity-Philadelphia Trust Co.* v. *Hines*, 10 Atl. (2d) 553, the Supreme Court of Pennsylvania upheld a statute very similar to the one here involved.

In *North Carolina Unemployment Compensation Commission* v. *Wachovia Bank & Trust Co.*, 2 S. E.

(2d) 592, the Supreme Court of North Carolina upheld a law almost identical with the one here involved.

In *Western Bank & Trust Co.* v. *Unemployment Compensation Commission of Ohio* (Court of Appeals not yet published), the court upheld a statute almost identical with the Texas statute here involved.

Chapter 11, Title 12, of the United States Code, known as the Federal Home Loan Bank Act, provides for the creation of Federal Home Loan Banks and the manner whereby Building and Loan Associations, Savings and Loan Associations, Cooperative Banks, Homestead Associations, Insurance Companies and Savings Banks shall be eligible to become members or so-called Non-Member Borrowers of such Federal Home Loan Banks.

No where in Chapter 11 is there any provision whereby the Member Banks are designated as agents or instrumentalities of the Federal Government. Provision is made, however, for the creation of Federal Home Loan Banks and their designation as agents of the Federal Government; the manner in which such banks can be taxed by the State is definitely set out. Chapter 12 of Title 12 entitled "Home Owners Loan Act of 1933" provides for the creation of the Home Owners Loan Corporation and in Section 1464 provides for the creation of Federal Savings and Loan Associations; provides that such Federal Savings and Loan Associations shall, upon

their organization, immediately become members of the Federal Home Loan Bank. There is also provided that any Member Bank of the Federal Home Loan Bank shall upon a majority vote by its eligible voters become a Federal Savings and Loan Association subject to all the provisions of the Act.

Section 1464, Subsection (k) of said Act, reads as follows:

> "When designated for that purpose by the Secretary of the Treasury, any Federal Savings and Loan Associations, or Member of any Federal Home Loan Bank may be employed as fiscal agent of the Government under such regulations as may be prescribed by said Secretary and shall perform all such reasonable duties as such fiscal agent of the Government as may be required of it. Any Federal Savings and Loan Association or Member of any Federal Home Loan Bank may act as agents for another instrumentality of the United States."

The mere fact that incorporation may be required to render some service under certain conditions to the United States Government does not by reason thereof create them instrumentalities of the Government such as will exempt them from taxation. This principle is well illustrated in the following cases:

> Western Union Telegraph Company v. Texas, 105 U. S. 460.
>
> C. O. G. Railroad Company v. Mackey, 256 U. S. 531.

Thomson v. Union Pacific Ry., 9 Wall 579.
South Carolina v. United States, 199 U. S. 437.

Section 1464, Subdivision (h) of the Home Loan Act of 1933, reads:

> "Such Associations including their franchise, reserves, surplus, loans and incomes shall be exempt from all taxation now or hereinafter imposed by the United States, and all shares of such Associations shall be exempt both as to their value and the incomes therefrom from all taxation (except surtax, estates, inheritance and gift taxes) now or hereafter imposed by the United States, and no state, territory, county, municipal or local taxing authority shall impose any tax on such associations or their franchise, capital, reserve, surplus, loans, or income, greater than that imposed by such authorities on other similar local, mutual or cooperative thrift and home financing institutions."

There is no contention in this case by petitioners that there is any greater or heavier tax or burden imposed by the Act in question on them than is imposed on all other business concerns operating or doing business within the State of Texas.

The Unemployment Compensation Act as passed by Texas is almost identical with that passed by practically every state in the Union and is patterned after the Social Security Tax Act of Congress and is an attempt on the part of Texas to cooperate with the Federal Government and with all other states

in creating a uniform Unemployment Compensation Law.

Respondents pray that the petition for writ of certiorari in this cause be in all things refused and denied.

Respondents have furnished counsel for petitioners copies of this reply and motion.

Respectfully submitted

GERALD C. MANN
Attorney General of Texas

GEORGE W. BARCUS
R. W. FAIRCHILD
Assistant Attorneys General
Attorneys for Respondents